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In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-511

A. JAY CRISTOL, as a resident and taxpayer of the City of Miami Beach, on his own behalf and in behalf of all others similarly situated, A. JAY CRISTOL, individually, and PALM-HIBISCUS-STAR ISLANDS PROPERTY OWNERS ASSOCIATION, a Florida corporation not for profit,

Petitioners,

vs.

THE CITY OF MIAMI BEACH, a municipal corporation, THE HONORABLE JAY DERMER, as Mayor of the City of Miami Beach, THE HONORABLE RUTH B. ROULEAU, as City Clerk of the City of Miami Beach, VIDA, LTD., a limited partnership, and MARSHALL WISE, Director, GERALD K. SCHWARTZ, Member, DAVID TAUB, Member, SHERMAN FAST, Member, ABE SOLOSKO, Member, as constituting the Miami Beach Housing Authority,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF CASE

The Respondents adopt as their statement of the case the District Court of Appeal's findings as set forth in its decision dated April 8, 1971, which is found in the Petitioners' Appendix, page 44, which sets forth:

> "This is an appeal from a summary final judgment for the defendants, The City of Miami Beach, The Honorable Jay Dermer, as Mayor of the City of Miami Beach, the Honorable Ruth P. Rouleau, as City Clerk of the City of Miami Beach, VIDA, Ltd., a limited partnership and Marshall Wise, Director, Gerald K. Schwartz, member, David Taub, member, Sherman Fast, member, Abe Solosko, member, as constituting the Miami Beach Housing Authority, all of whom are appellees in this case. The appellants are a resident and taxpayer of the City of Miami Beach, A. J. Cristol, and the Palm-Hibiscus-Star Islands Property Owners Association. The summary judgment was granted by the court after the taking of depositions and the filing of affidavits. Upon the motion of the appellees, this appeal was expedited by the shortening of the time for the filing of the record and the briefs and the oral argument was set for an early date. All of these scheduled events have now occurred and we have expedited the filing of this decision because of the nature of the subject matter involved.
>
> The complaint sought to enjoin the City of Miami Beach from conveying certain public lands to the defendant-appellee, VIDA, Ltd. The pleadings, depositions and affidavits on file make it clear that the public lands were to be conveyed

for the purpose of the erection thereon of an urban housing development under the regulations of the Department of Housing and Urban Development of the United States. The trial judge reached the conclusion that there were no genuine issues of material fact and that the defendants were entitled to a judgment as a matter of law."

QUESTIONS PRESENTED

The Respondents recognize that the only questions presented by the writ of certiorari are found on pages 2 and 3 of Petitioners' Brief which set forth:

I

"WHETHER THE FAILURE OF THE LOWER COURT TO OPEN OR OTHERWISE CONSIDER THE SEALED ENVELOPE CONTAINING THE DEPOSITIONS OF DEFENDANTS, ABE SOLOSKO AND RUTH B. ROULEAU, ON FILE PRIOR TO THE ENTRY OF SUMMARY JUDGMENT CONSTITUTED A DENIAL OF DUE PROCESS OF LAW?

II

WHETHER THE DENIAL OF A CONTINUANCE AT A HEARING ON SUMMARY JUDGMENT TO A PARTY WHO, UPON TIMELY AND EFFICACIOUS AFFIDAVIT, HAS ALLEGED THE EXISTENCE OF ADDITIONAL AVAILABLE EVIDENTIARY PROOF ESTABLISHING A MATERIAL FACT IN ISSUE RENDERS SAID HEARING COLORABLE AND ILLUSIVE JUSTICE AND CONSTITUTES A DENIAL OF DUE PROCESS OF LAW?"

REASONS FOR NOT GRANTING THE WRIT OF CERTIORARI

The Petitioners allege on page 9 of the Petition that the Court, which entered a summary judgment, refused to even read the deposition asserted by the Petitioners to prove a material fact at issue.

The Petition and Appendix is silent and does not show when, where or how the trial court refused to read the deposition and Question I, as presented by the Petitioners, is therefore without any facts to back up the allegations of the Petitioners. Surely a capable and resourceful attorney such as the attorney for the Petitioners would have demanded the Judge of the lower court to open and read the depositions at the time of the summary judgment if he felt they were crucial to his case.

Question II, presented by the Petitioners, complains of the unfairness of a denial of continuance at a hearing on the summary judgment. This was adequately considered by the appellate court in its review of the complete record on appeal and it concluded the denial was reasonable and the appellate court stated, see Petitioners' Brief, page 46 and 47:

> "Appellants' last line of attack is that the procedural handling of this case constituted a denial of procedural due process to the plaintiffs and that therefore the judgment should be reversed as a violation of the federal and state constitutions. We find nothing whatsoever in this record to suggest a denial of procedural due process to the appellants.

The record does not show the date of the filing of appellants' first complaint but it does show that on August 4, 1970, an amended complaint for injunction was filed. The next several months were taken up in pleadings and discovery. The motion for summary judgment which was eventually granted was filed in September, 1970, and the hearing thereon was held on the 9th day of November, 1970. Final judgment after the denial of motion for rehearing was not entered until January 18, 1971. Appellant was granted every opportunity to engage in discovery and full hearings were held.

We have considered the other points presented and are not convinced of error. The pleadings, depositions and affidavits together with the admissions on file demonstrated that there was no genuine issue of material fact to be tried and that the appellants were entitled to a judgment as a matter of law. The trial court properly entered the summary judgment appealed."

CONCLUSION

We respectfully submit therefor that the Petition for Writ of Certiorari has been filed in this case only to delay the Respondents further in the construction of a much needed housing project for the elderly and low income residents and the Petition should forthwith be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three copies of the foregoing Brief of Respondents in Opposition to Petition for Writ of Certiorari was mailed to CRISTOL, ROSE & ALDRICH, Attorneys for Petitioners, 21 Northeast First Avenue, Miami, Florida 33131, this day of October, 1971.

WILLIAM K. CHESTER